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July 6, 1994

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HAND DELIVER

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, Room 222
Washington, D.C. 20554


Re: ET Docket No. 93-266
Ex Parte Presentation

Dear Mr. Caton:

This letter is to notify the Commission that the attached ex parte letter with attachments was sent yesterday to Mr. William Kennard, General Counsel of the Commission. A courtesy copy, with attachments, was sent to each party so indicated in the letter. In accordance with Section 1.1206(a)(1) of the Commission's rules, attached are two copies of the letter with attachments.

Should you have any questions concerning this matter, please do not hesitate to contact the undersigned directly.

Sincerely,



Mark J. O'Connor
Counsel for Omnipoint Corporation

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

HAND DELIVER

Mr. William Kennard
General Counsel
Federal Communications Commission
Room 614, 1919 M Street, N.W.
Washington, D.C. 20554

Re: Pioneer's Preference Program ET Docket 93-266 Ex Parte Presentation

Dear Mr. Kennard:

This is to confirm our meeting at 4:00 p.m. Thursday, July 7 with Omnipoint Corporation. In preparation for that meeting, I wanted to bring to your attention H.R. 4700 and the accompanying statement by John D. Dingell. I bring to your specific attention page 3 of Mr. Dingell's statement stating that Omnipoint should be able to pay for its license on the basis of the price paid by other small businesses.

We believe that it is the intent of the bill that the broadband pioneers retain their MTA license preferences, and that the price and payment mechanisms for a small business like Omnipoint would be based on how small businesses pay for other 30 MHz licenses.

Sincerely,



Ronald L. Plessner

RLP/kdp
Enclosures

Mr. William Kennard
General Counsel
July 5, 1994
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| | |
|------------------------------|--------------------------|
| cc: The Honorable Reed Hundt | Mr. Don Gips |
| The Honorable James Quello | Mr. Robert Pepper |
| The Honorable Andrew Barrett | Mr. Michael Katz |
| The Honorable Rachelle Chong | Mr. Gerald Vaughan |
| The Honorable Susan Ness | Ms. Lauren (Pete) Belvin |
| Mr. William Caton | Mr. Byron Marchant |
| Mr. Ralph Haller | Mr. Richard Welch |
| Mr. Thomas Stanley | Mr. James L. Casserly |

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103D CONGRESS
2D SESSION

H. R. 4700

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

IN THE HOUSE OF REPRESENTATIVES

Mr. DINGELL (for himself, Mr. MOORHEAD, Mr. MARKEY, and Mr. SABO) introduced the following bill; which was referred to the Committee on Energy and Commerce.

A BILL

To amend the Communications Act of 1934 to prohibit unjust enrichment in the award of licenses by means of pioneer preferences.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Pioneer Preference Re-
5 form Act of 1994".

6 **SEC. 2. PIONEER PREFERENCES.**

7 (a) **RECOVERY OF VALUE OF PUBLIC SPECTRUM.—**

1 (1) AMENDMENT.—Section 309(j)(6)(G) of the
2 Communications Act of 1934 (47 U.S.C.
3 309(j)(6)(G)) is amended to read as follows:

4 “(G) be construed to prevent the Commis-
5 sion from awarding licenses to those persons
6 who make significant contributions to the devel-
7 opment of a new telecommunications service or
8 technology, except that—

9 “(i) the Commission shall prevent un-
10 just enrichment of any such person and
11 shall recover for the public a portion of the
12 value of the public spectrum resource made
13 available to such person by requiring such
14 person to pay a sum equal to not less than
15 90 percent of highest bid for a license
16 (awarded under this subsection) that is
17 most reasonably comparable in terms of
18 bandwidth, area designation, usage restric-
19 tions, and other technical characteristics to
20 the license awarded to such person; and

21 “(ii) the authority of the Commission
22 to provide preferential treatment in licens-
23 ing procedures (by precluding the filing of
24 mutually exclusive applications) to persons
25 who make significant contributions to the

1 development of a new service or to the de-
2 velopment of new technologies that sub-
3 stantially enhance an existing service shall
4 expire on September 30, 1998; or”.

5 (2) EFFECTIVE DATE.—The amendment made
6 by paragraph (1) of this subsection shall apply to
7 any licenses issued on or after June 3, 1994, by the
8 Federal Communications Commission pursuant to
9 any licensing procedure that provides preferential
10 treatment (by precluding the filing of mutually ex-
11 clusive applications) to persons who make significant
12 contributions to the development of a new service or
13 to the development of new technologies that substan-
14 tially enhance an existing service.

15 (b) RULEMAKING REQUIRED.—The Federal Commu-
16 nications Commission shall prescribe regulations specify-
17 ing the procedures and criteria by which the Commission
18 will evaluate applications for preferential treatment in its
19 licensing processes (by precluding the filing of mutually
20 exclusive applications) for persons who make significant
21 contributions to the development of a new service or to
22 the development of new technologies that substantially en-
23 hance an existing service. Such regulations shall—

24 (1) specify the procedures and criteria by which
25 the significance of such contributions will be deter-

1 mined, after an opportunity for review by experts in
2 the radio sciences drawn from among persons who
3 are not employees of the Commission or by any ap-
4 plicant for such preferential treatment;

5 (2) require the duplication of an applicant's test
6 results by independent parties;

7 (3) include such other procedures as may be
8 necessary to prevent unjust enrichment by ensuring
9 that the value of any such contribution justifies any
10 reduction in the amounts paid for comparable li-
11 censes under section 309(j) of the Communications
12 Act of 1934 (47 U.S.C. 309(j)); and

13 (4) be prescribed not later than 6 months after
14 the date of enactment of this section.

**Statement
of
The Honorable John D. Dingell
on the introduction of H.R. 4700
The "Pioneer Preference Reform Act"**

Today I introduced H.R. 4700, the "Pioneer Preference Reform Act." I am honored to be joined by several of my colleagues in co-sponsoring this bill: Mr. Moorhead, the Ranking Member of the Committee, Mr. Markey, the capable chairman of the Subcommittee on Telecommunications and Finance, and Mr. Sabo, the chairman of the House Budget Committee.

This important legislation accomplishes two objectives. First, it will recover for the public a portion of the value of any license issued using the FCC's "Pioneer Preference" procedures. In addition, it reforms those procedures to ensure that the contribution of the licensee correlates to the value of the license that is being awarded.

Last month, I sent the Commission a lengthy letter questioning the Commission's procedures for awarding "Pioneer Preferences". I received a lengthy response on the third of June. A careful review of that response convinced me that there was little, if any, attempt to correlate the value of the award with the contributions made by the applicants. No impartial review of test results was conducted by qualified, impartial experts. No effort was made to duplicate test results. The process was treated as a rulemaking, subject only to the provisions of the Administrative Procedures Act.

Moreover, it is clear that aggressive lobbying played an extremely important role in the Commission's decision to award "Pioneer Preferences" to applicants. In my view, this is inappropriate. An award of this value should be based on merit and hard science, not on lobbying ability.

It is my hope that we will schedule and hold hearings on this bill after Congress returns from the 4th of July break. I look forward to working with my colleagues as the legislative process moves forward.

H.R. 4700 contains two parts. The first amends the Communications Act to require that if the Federal Communications Commission (FCC) issues any license after June 3, 1994, utilizing its "Pioneer Preference" procedures, any recipient of such a license will be liable for a payment. The amount of the payment will be established at a level that is equal to 90% of the highest amount paid (at an auction) by a bidder for the most comparable license.

Thus, in the case of the Southern California license that has been tentatively awarded to Cox, Cox would have to pay an amount equal to 90% of the highest bid for either of the other two licenses for the same territory. The standard of comparison for Omnipoint, a relatively small business, would be 90% of the amount bid for the "entrepreneur" license that is reserved for smaller companies.

Part one also contains a "sunset," which terminates the ability of the Commission to grant "Pioneer Preferences" after September 30, 1998.

Part two of the bill requires the FCC to establish a formal review process for considering future applications for a "Pioneer Preference." Specifically, the Commission will have to employ "peer review" panels that are composed of acknowledged independent experts; will have to duplicate the results of the experiments; and will have to adopt such additional regulations so as to ensure that the value of the pioneer preference award is justified by the value of the contributions of the "Pioneer."